

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

EL MCELROY,  
Plaintiff,  
v.  
NANCY ADAM,  
Defendant.

Case No. [19-cv-05491-PJH](#)

**ORDER OF DISMISSAL WITH LEAVE  
TO AMEND**

Plaintiff, a state prisoner, proceeds with a pro se civil rights complaint under 42 U.S.C. § 1983. He has been granted leave to proceed in forma pauperis.

**DISCUSSION**

**STANDARD OF REVIEW**

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). In its review the court must identify any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. *Id.* at 1915A(b)(1),(2). Pro se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of the claim showing that the pleader is entitled to relief." "Specific facts are not necessary; the statement need only "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests."" *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (citations omitted). Although in order to state a claim a complaint "does not need detailed

1 factual allegations, . . . a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment]  
2 to relief' requires more than labels and conclusions, and a formulaic recitation of the  
3 elements of a cause of action will not do. . . . Factual allegations must be enough to  
4 raise a right to relief above the speculative level." *Bell Atlantic Corp. v. Twombly*, 550  
5 U.S. 544, 555 (2007) (citations omitted). A complaint must proffer "enough facts to state  
6 a claim to relief that is plausible on its face." *Id.* at 570. The United States Supreme  
7 Court has recently explained the "plausible on its face" standard of *Twombly*: "While legal  
8 conclusions can provide the framework of a complaint, they must be supported by factual  
9 allegations. When there are well-pleaded factual allegations, a court should assume their  
10 veracity and then determine whether they plausibly give rise to an entitlement to relief."  
11 *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009).

12 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential  
13 elements: (1) that a right secured by the Constitution or laws of the United States was  
14 violated, and (2) that the alleged deprivation was committed by a person acting under the  
15 color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

## 16 **LEGAL CLAIMS**

17 Plaintiff presents many allegations regarding the conditions of his confinement.

18 Pursuant to Fed. R. Civ. P. 8(a)(2), a plaintiff must provide "a short and plain  
19 statement of the claim showing that the pleader is entitled to relief...." Rule 8 requires  
20 "sufficient allegations to put defendants fairly on notice of the claims against them."  
21 *McKeever v. Block*, 932 F.2d 795, 798 (9th Cir.1991)). *Accord Richmond v. Nationwide*  
22 *Cassel L.P.*, 52 F.3d 640, 645 (7th Cir.1995) (amended complaint with vague and scanty  
23 allegations fails to satisfy the notice requirement of Rule 8.) "The propriety of dismissal  
24 for failure to comply with Rule 8 does not depend on whether the complaint is wholly  
25 without merit," *McHenry v. Renne*, 84 F.3d 1172, 1179 (9th Cir.1996).

26 Moreover, "[M]ultiple claims against a single party are fine, but Claim A against  
27 Defendant 1 should not be joined with unrelated Claim B against Defendant 2." *George*  
28 *v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007). "Unrelated claims against different

1 defendants belong in different suits,” not only to prevent the sort of “morass” that a multi-  
2 claim, multi-defendant suit can produce, “but also to ensure that prisoners pay the  
3 required filing fees – for the Prison Litigation Reform Act limits to 3 the number of  
4 frivolous suits or appeals that any prisoner may file without prepayment of required fees.”  
5 *Id.* (citing 28 U.S.C. § 1915(g)).

6 Deliberate indifference to serious medical needs violates the Eighth Amendment’s  
7 proscription against cruel and unusual punishment. *Estelle v. Gamble*, 429 U.S. 97, 104  
8 (1976); *McGuckin v. Smith*, 974 F.2d 1050, 1059 (9th Cir. 1992), *overruled on other*  
9 *grounds*, *WMX Technologies, Inc. v. Miller*, 104 F.3d 1133, 1136 (9th Cir. 1997) (en  
10 banc). A determination of “deliberate indifference” involves an examination of two  
11 elements: the seriousness of the prisoner’s medical need and the nature of the  
12 defendant’s response to that need. *Id.* at 1059.

13 A “serious” medical need exists if the failure to treat a prisoner’s condition could  
14 result in further significant injury or the “unnecessary and wanton infliction of pain.” *Id.*  
15 The existence of an injury that a reasonable doctor or patient would find important and  
16 worthy of comment or treatment; the presence of a medical condition that significantly  
17 affects an individual’s daily activities; or the existence of chronic and substantial pain are  
18 examples of indications that a prisoner has a “serious” need for medical treatment. *Id.* at  
19 1059-60.

20 A prison official is deliberately indifferent if he or she knows that a prisoner faces a  
21 substantial risk of serious harm and disregards that risk by failing to take reasonable  
22 steps to abate it. *Farmer v. Brennan*, 511 U.S. 825, 837 (1994). The prison official must  
23 not only “be aware of facts from which the inference could be drawn that a substantial  
24 risk of serious harm exists,” but he “must also draw the inference.” *Id.* If a prison official  
25 should have been aware of the risk, but was not, then the official has not violated the  
26 Eighth Amendment, no matter how severe the risk. *Gibson v. County of Washoe*, 290  
27 F.3d 1175, 1188 (9th Cir. 2002). “A difference of opinion between a prisoner-patient and  
28 prison medical authorities regarding treatment does not give rise to a § 1983 claim.”

1 *Franklin v. Oregon*, 662 F.2d 1337, 1344 (9th Cir. 1981).

2 Prisoners have a constitutional right of access to the courts. *See Lewis v. Casey*,  
3 518 U.S. 343, 350 (1996); *Bounds v. Smith*, 430 U.S. 817, 821 (1977). To establish a  
4 claim for any violation of the right of access to the courts, the prisoner must prove that  
5 there was an inadequacy in the prison's legal access program that caused him an actual  
6 injury. *See Lewis*, 518 U.S. at 349-51. To prove an actual injury, the prisoner must show  
7 that the inadequacy in the prison's program hindered his efforts to pursue a non-frivolous  
8 claim concerning his conviction or conditions of confinement. *See id.* at 351, 354-55.

9 The exact nature of plaintiff's claims is difficult to discern. Plaintiff first alleges that  
10 defendant Nancy Adam denied him medical care for his asthma and denied him access  
11 to a podiatrist to trim and file his toenails. He also states he was denied men's absorbent  
12 briefs, oxygen therapy, sunshields and effective pain killers, though it is not clear what  
13 medical condition these items were related to. Later plaintiff also discusses the denial of  
14 a wheelchair, walker, transport vehicle with lift, replacement meals, vitamins and other  
15 medical needs, but provides few details. Plaintiff then discusses how in general,  
16 prisoners are denied access to the courts and legal materials and that property clerks fail  
17 to return items. It is unclear if plaintiff seeks to proceed with a specific claim related to  
18 these issues.

19 The complaint is dismissed with leave to amend to provide more information.  
20 Plaintiff should only include a few related claims. He must also identify specific  
21 defendants and describe how they violated his constitutional rights in specific instances.  
22 General allegations concerning how the prison operates are insufficient.

23 With respect to his medical claims plaintiff must describe his specific medical  
24 needs and how defendant was deliberately indifferent. If certain treatment was denied,  
25 plaintiff must identify the treatment and why the denial violated his constitutional rights.  
26 Simply listing various treatments that were denied without providing more information is  
27 insufficient. For example, plaintiff must describe what asthma treatment was denied and  
28 how the denial adversely impacted his health. Plaintiff must also describe how his

1 medical problems are serious medical needs with respect to the legal standards set forth  
2 above.

3 **CONCLUSION**

4 1. The complaint is **DISMISSED** with leave to amend in accordance with the  
5 standards set forth above. The amended complaint must be filed no later than  
6 **November 12, 2019**, and must include the caption and civil case number used in this  
7 order and the words AMENDED COMPLAINT on the first page. Because an amended  
8 complaint completely replaces the original complaint, plaintiff must include in it all the  
9 claims he wishes to present. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir.  
10 1992). He may not incorporate material from the original complaint by reference. Failure  
11 to file amended complaint may result in dismissal of this action.

12 2. It is the plaintiff's responsibility to prosecute this case. Plaintiff must keep the  
13 court informed of any change of address by filing a separate paper with the clerk headed  
14 "Notice of Change of Address," and must comply with the court's orders in a timely  
15 fashion. Failure to do so may result in the dismissal of this action for failure to prosecute  
16 pursuant to Federal Rule of Civil Procedure 41(b).

17 **IT IS SO ORDERED.**

18 Dated: October 9, 2019

19  
20 /s/ Phyllis J. Hamilton

21 PHYLLIS J. HAMILTON  
22 United States District Judge  
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